

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

ANGELO JOHNSON,)	
)	
Petitioner,)	
)	
v.)	No. 1:20 CV 102 DDN
)	
JASON LEWIS,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This action is before the court on the motions of petitioner Angelo Johnson for the appointment of counsel (Doc. 15) and for an evidentiary hearing (Doc. 16). Petitioner is currently proceeding pro se and in forma pauperis.

Generally, a district court should hold an evidentiary hearing on a habeas corpus petition “if the facts are in dispute or if a fair evidentiary hearing was not conducted in state court.” *Ruiz v. Norris*, 71 F.3d 1404, 1406 (8th Cir. 1995). In his motion for evidentiary hearing, petitioner argues that respondent has raised several points that petitioner did not have an opportunity to address in state proceedings; that there is case law contrary to respondent’s position; and that one of petitioner’s claims is an issue of first impression. Petitioner’s ground for requesting a hearing do not place facts in dispute, and petitioner does not contend that a fair evidentiary hearing was not conducted in the state proceedings. The Court concludes that the record provided by respondent is sufficient for petitioner’s grounds for relief to be properly decided. If the Court determines that an evidentiary hearing is necessary, it will be ordered.

Except in cases where an evidentiary hearing is necessary, appointment of counsel is left to the court’s discretion. *Armstrong v. Kemna*, 534 F.3d 857, 868 n.5 (8th Cir. 2008). Petitioner’s entitlement to the appointment of counsel depends on the legal and factual complexity of the case, the ability of the indigent litigant to investigate the facts, the

existence of conflicting testimony, and the ability of the indigent to present his claim. *Phillips v. Jasper County Jail*, 437 F.3d 791, 794 (8th Cir. 2006).

After considering these factors and the record in this case, the court concludes that petitioner has clearly articulated his claims and stated the facts in support of those claims. The Court believes that the facts and legal issues involved are not so complicated that the appointment of counsel is warranted at this time.

Accordingly,

IT IS HEREBY ORDERED that the motions of petitioner Angelo Johnson for the appointment of counsel (Doc. 15) and for an evidentiary hearing (Doc. 16) are denied.

/s/ David D. Noce

UNITED STATES MAGISTRATE JUDGE

Signed on October 19, 2021.